

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH EDISON COMPANY

Application for a Certificate of Public Convenience and Necessity, pursuant to Section 8-406.1 of the Illinois Public Utilities Act, and an Order pursuant to Section 8-503 of the Illinois Public Utilities Act, to Construct, Operate, and Maintain a new 345 kilovolt transmission line in Ogle, DeKalb, Kane and DuPage Counties, Illinois

Docket 13-0657

**RESPONSE IN OPPOSITION TO
COMMONWEALTH EDISON COMPANY'S MOTION TO STRIKE, OR IN THE ALTERNATIVE,
FOR LEAVE TO FILE SURREPLY BRIEF ON REOPENING**

The SKP Parties and URMCo (together, the "SKP Parties") respond in opposition to Commonwealth Edison Company's ("ComEd's") Motion to Strike, or in the Alternative, for Leave to File Surreply Brief on Reopening (the "ComEd Motion to Strike"), and in support thereof state as follows:

1. ComEd opened the door on reopening to other parties addressing the issue of Auction Revenue Rights ("ARRs"). As the SKP Parties, Deutsch *et al.*, and the City of Elgin all pointed out in their Reply Briefs on Reopening ("RBoR"), ComEd re-asserted the alleged ARR-related hedging benefits in its Initial Brief on Reopening.¹ The SKP Parties also cited the testimony on reopening of ComEd witness Naumann to the same effect. There was no need for Mr. Naumann to include that portion of his testimony given that the objective of the reopening pertained

¹ ComEd claims that it made no reference to ARRs or who uses them in its Initial Brief on Reopening. ComEd Motion to Strike, at 1, ¶1. What ComEd did state, expressly, was, "The record proves the Project will ... make possible the efficient hedging of the remaining congestion as called for by the rules governing the regional transmission market." ComEd Initial Brief on Reopening, at 1. This plainly refers, without using the actual name, to the Stage 1A ARRs. If ComEd disagrees, it could easily have informed everyone what it was referencing by this quoted language, if not ARRs, but it did not do so.

to notice to parties and certain routing issues.² And there was no need for ComEd to reference it again in its Initial Brief on Reopening. Consequently, ComEd's complaint about the RBoRs resulted from its own doing. It would have been prejudicial to the SKP Parties and others to simply ignore this added testimony and briefing³, thereby leaving the inference that said parties agreed with ComEd's position. ComEd's decision to include the additional ARR-related testimony and argument was made with the apparent intention to help persuade the Commission to agree with its position on this issue. It was entirely proper for ComEd opponents in this proceeding to reply to this argument. As such, the RBoRs were consistent with the Rules of Practice, including Rule 800(c) pertaining to the permissible scope of reply briefs. 83 Ill. Admin. Code 200.800(c).

2. ComEd refers to the RBoRs as containing "lengthy" arguments on this issue. Responding only for the SKP Parties, that characterization is incorrect. The portion of the SKP Parties' RBoR that discusses the issue amounts to less than two full pages (bottom of p. 3, all of p. 4, and top portion of p. 5).⁴ The SKP Parties made it clear in their RBoR that they were not reasserting all the argument previously made on this issue, but instead only briefly summarizing their position.⁵

3. ComEd complains about having no chance to respond to the ARR-related

² ComEd's representation that there "was no testimony on ARRs offered during the reopening" is wrong. ComEd Motion to Dismiss, at 2, ¶1.

³ ComEd claims that it did not "argue" in its Initial Brief on Reopening "on any point other than questions concerning the Project's routing." ComEd Motion to Strike, at 2, ¶1. This is simply an attempt by ComEd to utilize semantics to its advantage. ComEd's Initial Brief on Reopening did not contain a separately labeled "Argument" section, and the section labeled "Background" where the contention in question appears plainly sets forth a portion of ComEd's argument as to why the Commission should approve the GPG Project.

⁴ ComEd incorrectly asserts that the ARR-related argument occupies pages 1-5 of the SKP Parties' Reply Brief on Reopening. ComEd Motion to Strike, at 2, fn. 3.

⁵ The SKP Parties stated in their RBoR, "We will not in this Reply Brief on Reopening again describe in detail, with citations to the evidentiary record, all the facts and supporting argument as to why the Commission should decline to grant a CPCN for the GPG Project. To briefly summarize our position on this issue, however, the Commission Staff and SKP Parties and URM explained and demonstrated in the proceeding prior to Reopening that the supposed benefits of Stage 1A ARRs are all but non-existent" (follow-on citations and quotation omitted). SKP Parties RBoR, at 4.

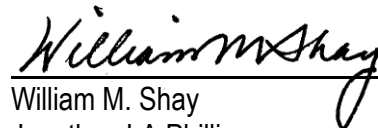
arguments. ComEd Motion to Strike, at 2, ¶2. That complaint flies in the face of what transpired during the earlier portions of this proceeding. ComEd had plenty of opportunities to respond to this issue, in testimony and in briefing, but declined to do so.⁶ It would be patently unfair to the Commission and other parties to allow ComEd to do so now, at this late stage, and outside of and in violation of the schedule that has been set for reopening.⁷

WHEREFORE, the SKP Parties respectfully request that the ComEd Motion to Strike be denied in its entirety, including its request, in the alternative, for leave to file a surreply brief on reopening; and that Appendix I to the ComEd Motion to Strike be stricken and not considered.

August 25, 2014

Respectfully submitted,

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⁶ SKP Parties' RBoR, at 4-5, including fn. 2 at 5.

⁷ ComEd presumably will have full opportunity to address this issue during the briefs on exceptions stage of the proceeding following issuance of the Administrative Law Judges' Proposed Order.